



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.25006 of 2019

WEB COPY

M.Balamurugan

... Petitioner

Vs.

1.The State of Tamil Nadu
represented by its Principal Secretary to Government,
Rural Development and Panchayat Raj Department,
Secretariat,
Chennai 600 009.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Salai,
Saidapet,
Chennai 600 015.

3.The District Collector,
Sivagangai District,
Sivagangai.

4.The Block Development Officer,
Kallal Panchayat Union,
Kallal,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the first respondent herein in Letter Na.Ka.No.3726 / Pa A-7/2019-3, dated 04.07.2019, quash the same and consequently direct the respondents herein to declare the successful completion of the petitioner's probation with effect from 05.01.2011 and consequently direct the respondents to promote the petitioner as Assistant with effect from 24.05.2011 and as Deputy Block Development Officer with effect from 07.05.2015 by placing the petitioner before his immediate junior and to provide all consequential and monetary benefits to the petitioner.



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For Petitioner : Mr.D.Sivaraman
For R1 to R3 : Mr.S.Dhayalan
Government Advocate
For R4 : Mr.M.Pandiarajan
Additional Government Pleader

ORDER

The petitioner herein was appointed as a Junior Assistant on 05.01.2009 in Thirupuvanam Panchayat Union on compassionate ground. As per the terms of the appointment, the petitioner would be placed on probation for a period of two years and during such period of probation, the petitioner is required to complete the Bhavanisagar Foundational Training. Though the petitioner had completed the two years period on probation as per the terms of appointment, the respondent had belatedly subjected the petitioner to Bhavanisagar Training in the month of December 2015 only. The petitioner had initially failed in the first attempt of the training and then completed the training in the next attempt in June 2016. Consequently, the first respondent had declared the probation with effect from 22.05.2016 ie., from the date of completion of the Bhavanisagar Training. The grievance of the petitioner is that the petitioner's probation is required to be declared with effect from 05.01.2011, which is on completion of the two years period from the date of his original appointment. With this ground, the present writ petition has been filed.

2. The learned counsel for the petitioner would submit that during the course of two years probation period, the respondents had not facilitated the conduct of the Bhavanisagar Foundational Training and when the petitioner was required to undergo the training belatedly after almost about six years, in the month of December 2015, such belated conduct of the training should not be put against the petitioner. The learned counsel further submitted that, had the respondents facilitated the petitioner to undergo the training within the two years probation period, he would have had many attempts to complete the training and therefore, the respondents, on his failure on the first attempt, has the impediment. Even otherwise, the learned counsel would submit that the regulation does not disqualify an employee for declaration of probation on the ground that he did not complete his training in the first attempt. The learned counsel further submitted that for similarly placed thousands of employees, whose training was belatedly conducted after a period of two years, the respondents have declared the probation with effect from the date of completion of the two years probation period and that the present impugned order declaring the petitioner's probation from the date of completion of his training is in discrimination and hence arbitrary.

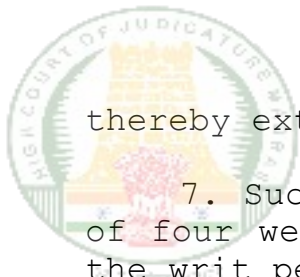


3. Per contra, the learned Government Advocate would place reliance on the averments made in the counter affidavit filed by the third respondent and submit that the purpose of sending a person for basic training at Bhavanisagar is to equip him in the Governmental functioning and since the petitioner had showed slackness during the first attempt of the training and failed, he cannot claim parity with the others.

4. Admittedly, the respondents herein had not conducted any training programme during the two years probation period of the petitioner. The third respondent, in his counter affidavit also ratified that due to large number of persons being deputed for training at the Civil Service Training Institute, Bhavanisagar, they had belatedly deputed him for the training in the month of December 2015 only. As such, the stand taken by the petitioner that the delay in deputing the petitioner for the training is not on the part of the petitioner and therefore it cannot be put against him seems acceptable. It is also not stated in the counter affidavit as to which regulation is an impediment for declaration of probation to the probationers, who had not cleared the training in the first attempt. Apart from the bald statement that the failure in the first attempt is an slackness on the probationer, no reliance has been placed on any rule or regulation in this regard. When the petitioner herein had raised a ground with regard to discrimination, to the effect that, when similarly placed probationers have been declared to have cleared probation from the date of completion of the two years, the respondents have not countered the same with any justifiable or legal stand. The only attempted justification is that the petitioner cannot claim parity with the other employees, because he had failed in his first attempt. As observed earlier, failure in the first attempt is not an embargo or an impediment for consideration for the purpose of declaring the probation. In these circumstances, the impugned order declaring the petitioner's probation with effect from 22.05.2016 ie., the date of completion of the Bhavanisagar Training, is not only illegal but is also discriminatory and arbitrary. As such, the order itself cannot be sustained and consequently, the petitioner would be entitled to have the probation declared with effect from 05.01.2011, which is the date on which he had completed his two years probation period from his initial appointment.

5. In the light of the above observations, the impugned order dated 04.07.2019 passed by the first respondent is quashed. Consequently, there shall be a direction to the first respondent herein to declare the completion of the petitioner's probation with effect from 07.01.2011 and consequently, extend all the service and monetary benefits due to the petitioner from 07.01.2011.

6. The first respondent shall also ensure that the petitioner's seniority is fixed appropriately, above his immediate junior and



thereby extend the benefits.

7. Such an exercise shall be completed at least within a period of four weeks from the date of receipt of a copy of this order and the writ petition stands thus allowed. No costs.

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Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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NOTE: *In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.*

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Raj Development,
Secretariat,
Chennai 600 009.

2.The Director,
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3.The District Collector,
Sivagangai District,
Sivagangai.

4.The Block Development Officer,
Kallal Panchayat Union,
Kallal,
Sivagangai District.

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-5526[F] dated 17/02/2021)
+1 CC to M/s.SPL GP (SR-5682[F] dated 17/02/2021)

W.P. (MD) No.25006 of 2019

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